the insolvency, and though there may have been no laches in discovering it. 1 THOMP., CORP. (Ed. 2), § 736; 1 COOK, CORP. (Ed. 6), § 163; 2 CLARK & MARSHALL, CORP., § 473; 10 CYC. p. 441; *Bank* v. *Newbegin*, 74 Fed. 135, 20 C. C. A. 339, 33 L. R. A. 727. It is difficult to reconcile the American authorities. That the American rule is the same in principle as the English and differs only in application, see 10 CYC. 441 and numerous cases there cited, also, COOK, CORP. (Ed. 6) § 164 and cases cited. But by the weight of authority there may, under exceptional circumstances, be a rescission even after insolvency. 1 THOMP. CORP. (Ed. 2), § 737. The contract to take stock in a corporation, induced by fraudulent representations on the part of the directors and officers of the corporation, is not void, but only voidable at the option of the stockholder. MORAWETZ, CORP. (Ed. 2), §§ 108, 839; 1 CLARK & MARSHALL, CORP., § 473a; 1 THOMP., CORP. (Ed. 2), § 734; 1 COOK, CORP. (Ed. 6), § 151; *Upton* v. *Englehart*, 3 Dill. 496, 504, 28 Fed. Cas. 835; 10 CYC. p. 423. A purchaser of national bank stock from the bank itself cannot, after the bank has passed into the hands of a receiver, defend against the statutory liability on the ground of fraud inducing him to purchase, unless he proves acts of diligence which negative any charge of negligence, and also proves that no debt was created nor credit given the bank after he became such stockholder. *Wallace* v. *Hood*, 89 Fed. 11, affirmed in 182 U. S. 555; *Briggs* v. *Cornwell*, 9 Daly (N. Y.) 436; 10 CYC. 441; 1 COOK, CORP. (Ed. 6), § 164. Nor can one who has been induced to become a shareholder in a corporation by fraudulent representations recover the amount paid by him on his subscription, after the corporation has become insolvent, until the claims of creditors are satisfied. 10 CYC. p. 441; *Turner* v. *Grangers' L. etc. Ins. Co.*, 65 Ga. 649, 38 Am. Rep. 801; *Howard* v. *Glenn*, 85 Ga. 238, 11 S. E. 610, 21 Am. St. Rep. 156; *Ogilville* v. *Knox Ins. Co.*, 22 How. 380; *Moosbrugger* v. *Walsh*, 89 Hun. (N. Y.) 564, 35 N. Y. Supp. 550; MORAWETZ, CORP. (Ed. 2) § 839; *Ruder* v. *Marander*, 66 Ind. 486; *Duffield* v. *Barnum Wire & Iron Works*, 64 Mich. 293, 31 N. W. 310; *Howard* v. *Turner*, 155 Pa. St. 349, 35 Am. St. Rep. 883; *Ruggles* v. *Brock*, 6 Hun. 164. A stockholder cannot rescind unless he can show there are no creditors who became such while he held the shares of stock. *Wallace* v. *Hood*, 89 Fed. 11, 18; *Dettra* v. *Kestner*, 147 Pa. St. 566. Probably a repudiation of the contract and an offer to rescind, or the institution of a suit for that purpose, before the insolvency proceedings are begun is sufficient. *Upton* v. *Englehart*, 3 Dill. 496; *Savage* v. *Bartlett*, 78 Md. 561; *Upton* v. *Triblecock*, 91 U. S. 45 (dissenting opinion); *Reese River Silver Min. Co.* v. *Smith*, L. R. 4 H. L. 71, 39 L. J. Ch. N. S. 849; *Ramsey* v. *Thompson Mfg. Co.*, 116 Mo. 313. The principal case follows the case of *Merrill* v. *Florida Land & Improvement Co.*, 60 Fed. 18, 8 C. C. A. 444. It differs from *Wallace* v. *Hood*, supra, in that here no statutory liability was involved; but since the petition did not show that there were no creditors who had become such while petitioner held the stock, in the light of the above authorities, there is reason for thinking that the demurrer should have been sustained.

CORPORATIONS—ULTRA VIRES—CONTRACTS.—Defendant corporation sold 100 shares of its capital stock to plaintiff, agreeing to repurchase it on demand at

the price paid. This contract was not merely in excess of, but impliedly contrary to, the charter powers of the company. *Held,* that the contract was ultra vires and void, and that since it was executory the plaintiff could not recover. *Wilson* v. *Torchon Lace & Mercantile Co.,* (Mo. 1912), 149 S. W. 1156.

The contract in this case was executory and therefore under the circumstances stated was not enforceable. 10 CYC. 244; *McNett* v. *Cooper,* 13 Fed. 587, 590; BISHOP, CONTRACTS, (Ed. 2), § 624, 627, 471; *Nassau Bank* v. *Jones,* 95 N. Y. 115, 2 WILGUS, CORP. CAS. 1205; *Thomas* v. *Railroad Co.,* 101 U. S. 71, 86; *McNulta* v. *Corn Belt Bank,* 164 Ill. 427, 452. Where a person makes with the officers of a corporation an illegal contract—beyond the powers of the corporation as shown by its charter—such person cannot recover on the contract, because he acts with knowledge that the officers have exceeded their powers and the powers of the corporation. REESE, ULTRA VIRES, 70; 3 THOMP. CORP. (Ed. 2), §§ 2796, 2799; 10 CYC. 1148; *De La Vergne Co.* v. *German Sav. Inst.,* 175 U. S. 40; *California Bank* v. *Kennedy,* 167 U. S. 362; *Central Transp. Co.* v. *Pullman Co.,* 139 U. S. 24; *Miners Ditch Co.* v. *Zellerbach,* 37 Cal. 543, *National Home Building Ass'n.* v. *Bank,* 181 Ill. 35. In an action on such an executory contract made by a corporation, the corporation is not estopped from invoking the doctrine of ultra vires. GREENE'S BRICE, ULTRA VIRES, 610; REESE ULTRA VIRES, 70; 1 CLARK & MARSHALL, CORP., § 213a; *Thomas* v. *Railroad Co.,* 101 U. S. 71; *Wright et al.* v. *Hughes, Assignee,* 119 Ill.. 324; *First National Bank* v. *Winchester,* 119 Ala. 168. In the principal case there were no such equities as arise in cases where the contract has been executed. *Coppin* v. *Greenlees & Ransom Co.,* 38 Ohio St. 275, 1 WILGUS, CORP. CAS. 1048 and note citing cases. For cases illustrating the different American theories on the power of a corporation to acquire its own shares, see *Chapman* v. *Iron Clad Rheostat Co.,* 62 N. J. Law 497, 1 WILGUS CORP. CAS. 1045 and note, 1047, 1051 and note; *Price* v. *Pine Mountain Iron and Coal Co.,* 32 S. W. Rep.. 267; *Coppin* v. *Greenlees & Ransom Co.,* 38 Ohio St. 275.

DEEDS—LIMITED ESTATE WITH POWER TO SELL FOR SUPPORT—PRESUMPTION AS TO SALE MADE.—In a deed to take effect at his death, grantor gave his wife property "with all the rights and privileges belonging thereunto, for the support of the said (wife)" and anything remaining at her death should go equally to the plaintiffs here. The wife sold some of the realty to the defendants herein, it not appearing whether such sale was for her support. At her death plaintiffs sued without alleging that the above sale was not for support. *Held* on demurrer that plaintiffs could not recover. *Huff* v. *Yarbrough,* (Ga. 1912) 75 S. E. 662.

Where property is given to one for life with power of disposal, either absolute or for particular purposes, with remainder over, the life estate is not raised to a fee by the annexation of the power. *Wetter* v. *Walker,* 62 Ga. 142; *Baldwin* v. *Morford,* 117 Ia. 72; *Metzen* v. *Schopp,* 202 Ill. 275; *Kirkpatrick* v *Kirkpatrick,* 197 Ill. 144; *Ducker* v. *Burnham,* 146 Ill. 9; *Rusk* v. *Zuck,* 147 Ind. 388; *Small* v. *Thompson,* 92 Me. 539; *Mills* v. *Bailey,* 88 Md. 321;